

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REBECCA LAVELLE,

Plaintiff,

v.

CL WEST MANAGEMENT LLC,
INC.; WESTMONT HOSPITALITY
GROUP EXTENDED STAY; WHG,
LLC; REDROOF, INC.; and
HOMETOWNE STUDIOS, LLC,

Defendants.

NO. 2:21-CV-0170-TOR

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Defendants' Motion for Summary Judgment (ECF No. 58), Motion for Sanctions or for Second Order to Compel (ECF No. 75), Motion to Expedite Motion to Strike Untimely Response (ECF No. 92), and Motion to Strike Response to Motion (ECF No. 94). These matters were submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Defendants' Motion for Summary Judgment (ECF No. 58) is **granted in part** and **denied in**

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT ~ 1

1 **part**, Defendants’ Motion for Sanctions or for Second Order to Compel (ECF No.
2 75) is **granted in part** and **denied in part**, Defendants’ Motion to Expedite
3 Motion to Strike Untimely Response (ECF No. 92) is **denied as moot**, and
4 Defendants’ Motion to Strike Response to Motion (ECF No. 94) is **denied**.

5 **BACKGROUND**

6 This case arises out of Plaintiff’s employment with Hometowne Studios, a
7 hotel, in Spokane Valley, Washington. ECF No. 9 at 3. On February 24, 2021,
8 Plaintiff filed her original complaint against Defendants. ECF No. 1. Plaintiff is
9 proceeding *pro se* and *in forma pauperis* under 28 U.S.C. § 1915. ECF No. 7.
10 That same day, Plaintiff filed her amended complaint. ECF No. 9.

11 On August 2, 2021, the Court dismissed Plaintiff’s amended complaint in
12 part, finding Plaintiff’s Age Discrimination Employment Act (“ADEA”) claims for
13 discrimination and retaliation against Defendant CL West Management LLC were
14 adequately pled but dismissed Plaintiff’s Title VII, Fair Labor Standards Act
15 (“FLSA”), Equal Pay Act (“EPA”), and Washington’s EPA claims without
16 prejudice. ECF No. 11. The Court also denied Plaintiff’s motion for appointment
17 of *pro bono* counsel and allowed Plaintiff to file a second amended complaint
18 within 60 days of the order. *Id.* On October 6, 2021, Plaintiff filed her second
19 amended complaint with exhibits. ECF Nos. 15-16.

1 On December 20, 2021, the Court granted in part and denied in part
2 Defendant CL West Management LLC's motion to dismiss, dismissing Plaintiff's
3 Family Medical Leave Act ("FMLA"), Fair Labor Standards Act ("FLSA"), and
4 EPA claims without prejudice and with leave to amend. ECF No. 32.

5 On February 23, 2022, Plaintiff filed the currently operative third amended
6 complaint. ECF No. 41. Plaintiff raises the following claims against Defendants
7 CL West Management LLC, Westmont Hospitality Group Extended Stay, LLC
8 WHG, LLC, Red Roof, Inc., and Hometowne Studios, LLC, Red Roof, Inc. for
9 violations of the ADEA, Title VII, EPA, FLSA, False Claims Act ("FCA"), Title
10 VIII, and Washington's Law Against Discrimination ("WLAD"). ECF No. 41.
11 Plaintiff received her right to sue letter from the Equal Employment Opportunity
12 Commission. ECF No. 19 at 2.

13 On July 25, 2022, Defendants filed the present motion for summary
14 judgment on all of Plaintiff's claims but the WLAD. ECF No. 58. Defendants
15 also presented Plaintiff with notice of the summary judgment ruler requirements.
16 ECF No. 61. The parties timely filed their respective response and reply. ECF
17 Nos. 69, 84. The Court granted Plaintiff's motion for leave to file a surreply. ECF
18 Nos. 91, 98. Additionally, Defendants filed a motion for sanctions or for a second
19 order to compel, and moved to strike Plaintiff's untimely response. ECF Nos. 75,
20 94. Except where noted, the following facts are not in dispute.

FACTS

On May 15, 2019, Plaintiff applied to a position at HomeTowne Studios, owned by CL West Management, LLC, in Spokane Washington. ECF No. 58 at 2. On May 22, 2019, Plaintiff was offered a position as a Maintenance Technician and began work the same day. *Id.* at 2-3. Plaintiff's starting wage was \$14.50 per hours, and was later raised to \$14.94 per hour. *Id.* at 3. Plaintiff was initially supervised by Joshua Hendricks. *Id.*

In October 2019, Plaintiff applied for the General Manager position (Mr. Hendrick's position), but was not selected. *Id.* Gary Sawyer was selected for the position and began on November 2019. *Id.*

At the end of 2019, Plaintiff overheard Mr. Sawyer use the phrase "God damn." *Id.* Plaintiff confronted Mr. Sawyer about this, to which he stated "I hate God." *Id.* Around the same time, Mr. Sawyer brought up God and said he turned his back on becoming a pastor. *Id.* Plaintiff believes the owners of Westmont Hospitality are "extremely strong Muslims" that terminated her for her Christian beliefs. *Id.* Plaintiff also overheard Mr. Sawyer call her "Ole' girl." *Id.* Plaintiff disputes that Mr. Sawyer stated this only once, relying on a text message from a coworker acknowledging she heard Mr. Sawyer call Plaintiff "Ol Girl." ECF No. 70 at 2, ¶¶ 2 (citing ECF No. 9-1 at 105). Plaintiff also contends Mr. Sawyer would scream at her and was generally aggressive. ECF No. 58 at 3.

1 On December 20, 2019, Plaintiff was given her first written warning. *Id.* at
2 4. On January 12, 2020, Mr. Sawyer documented Plaintiff again, stating he
3 “witnessed [Plaintiff] using the GMs computer to apply for jobs outside the
4 company while clocked in which is saved in the history of the computer.
5 [Plaintiff] also was utilizing the same computer that night after [she] had clocked
6 out for the day for the same purpose.” *Id.* On January 14, 2020, Plaintiff was
7 documented because she “failed to complete the task of replacing trash bags in all
8 containers leading to severe mess.” *Id.* Plaintiff testified she did so to two bins for
9 safety precautions. *Id.* On January 15, 2020, Plaintiff was documented for failing
10 to arrive to work on time. *Id.* Plaintiff disputes this, stating she was at work early
11 but was not on the job because she was cleaning her son’s room and was “doing
12 the housekeepers a favor.” *Id.*; ECF No. 70 at 7, ¶ 28.

13 On January 16, 2020, Plaintiff was counseled as Mr. Sawyer “was informed
14 by a tenant that let [him] know that [she had] been making several unwanted
15 advances toward them and wanted this to end.” ECF No. 58 at 4. Plaintiff
16 acknowledges a complaint was made, but asserts the complaint was false and the
17 person recanted after Plaintiff’s termination. *Id.*

18 On January 22, 2020, Plaintiff was documented as she “called and Text at
19 9:59am one minute prior to [her] 10:00 start time and stated that [she] had to find a
20 new place to live. Per our discussion on 1/19/2020 you understood any tardiness

1 would result in a termination. You did not follow the expectations given on the
2 final write up and it is now a termination.” *Id.* Plaintiff does not dispute that she
3 was in fact tardy and did not provide prior notice. *Id.* at 5. On January 26, 2020,
4 Plaintiff was terminated.

5 Plaintiff asserts she worked every Sunday in overtime without pay, despite
6 all overtime requiring manager approval. *Id.* at 5. Plaintiff was not scheduled to
7 work on Sundays, was not requested to work on Sundays, did not clock in, nor did
8 she notify anyone she worked on Sundays. *Id.* Defendants assert Plaintiff was
9 paid for all time in which she clocked-in and was schedule, and was paid overtime
10 when she worked in excess of 40 hours per workweek. *Id.* Plaintiff disputes
11 overtime was paid on the grounds Defendants regularly changed the hours she
12 worked. ECF No. 70 at 4, ¶ 9. Plaintiff further disputes the overtime allegations
13 on the grounds that she was asked to work overtime and was often on call for
14 maintenance issues. *Id.*, ¶ 10.

15 DISCUSSION

16 I. Admissible Evidence

17 As a threshold matter, Defendants object and move to strike Plaintiff’s
18 evidence submitted in response to summary judgment on the grounds that
19 documents are hearsay and/or were illegally obtained. ECF Nos. 84.
20

1 Hearsay is an out of court statement used to prove the truth of the matter
2 asserted that is not subject to any exception. *See* Fed. R. Evid. 801, 802. A court
3 may consider inadmissible hearsay evidence on a motion for summary judgment so
4 long as the underlying evidence may be provided in an admissible form at trial. *JL*
5 *Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1110 (9th Cir. 2016).
6 However, the Court may use its equitable powers to exclude evidence that is
7 wrongfully obtained outside of the discovery process. *See Fayemi v. Hambrecht &*
8 *Quist, Inc.*, 174 F.R.D. 319, 324-27 (S.D.N.Y. 1997).

9 Here, Defendants object to an unsigned declaration, text messages on the
10 grounds of hearsay, and Defendants' business records on the grounds that Plaintiff
11 did not request through the course of discovery. Plaintiff submitted a corrected
12 signed declaration, the text message testimony could be presented as admissible
13 testimony in the form of live testimony at trial, and their evidence does not
14 establish that the business records were wrongfully obtained at this time.
15 Therefore, the Court will consider all the relevant evidence in the record.

16 **II. Summary Judgment Standard**

17 The Court may grant summary judgment in favor of a moving party who
18 demonstrates "that there is no genuine dispute as to any material fact and that the
19 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling
20 on a motion for summary judgment, the court must only consider admissible

1 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir. 2002). The
2 party moving for summary judgment bears the initial burden of showing the
3 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
4 317, 323 (1986). The burden then shifts to the non-moving party to identify
5 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
6 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
7 of evidence in support of the plaintiff’s position will be insufficient; there must be
8 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

9 For purposes of summary judgment, a fact is “material” if it might affect the
10 outcome of the suit under the governing law. *Id.* at 248. Further, a dispute is
11 “genuine” only where the evidence is such that a reasonable jury could find in
12 favor of the non-moving party. *Id.* The Court views the facts, and all rational
13 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
14 *Harris*, 550 U.S. 372, 378 (2007). Summary judgment will thus be granted
15 “against a party who fails to make a showing sufficient to establish the existence of
16 an element essential to that party’s case, and on which that party will bear the
17 burden of proof at trial.” *Celotex*, 477 U.S. at 322. While a *pro se* litigant’s
18 allegations are to be liberally construed, non-prisoner “*pro se* litigants in the
19 ordinary civil case should not be treated more favorably than parties with attorneys
20 of record.” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

1 *1. ADEA*

2 Defendants move for summary judgment on Plaintiff's age discrimination
3 claim. ECF No. 58.

4 To state a claim of discrimination under the ADEA, a plaintiff must show
5 that (1) she was at least forty years old, (2) she was performing her job
6 satisfactorily, (3) she was discharged, and (4), either replaced by substantially
7 younger employees with equal or inferior qualifications or discharged under
8 circumstances otherwise giving rise to an inference of age discrimination. *Diaz v.*
9 *Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008). If satisfied, the
10 burden shifts to the employer to articulate a "legitimate, nondiscriminatory reason
11 for the adverse employment action." *Becka v. APCOA/Standard Parking*, 146 F.
12 Supp. 2d 1109, 111 (C.D. Cal.). If satisfied, the burden shifts back to the plaintiff
13 to show "pretext" for the age discrimination. *Id.*

14 Here, Plaintiff is 55 years old, and was over the age of 40 at the time of the
15 events. ECF No. 58 at 9. Plaintiff asserts she was performing her job
16 satisfactorily, she was discharged, and was replaced by a substantially younger
17 male employee who was paid more. ECF Nos. 69, 70. Therefore, Plaintiff has
18 made a *prima facie* case of age discrimination and the burden shifts to Defendant
19 to demonstrate a legitimate, nondiscriminatory reason for the adverse employment
20 action.

1 Defendants dispute Plaintiff was performing her job satisfactorily on the
2 grounds she received multiple write ups for using company resources for a
3 personal job search, failed to replace all trash bags in the garbage cans, failed to
4 arrive at work on time, was reported for making unwanted advances towards a
5 guest, and called out for work one minute before her shift began after being warned
6 that further lateness would not be tolerated. ECF No. 58 at 9. These violations of
7 Defendants' policies are legitimate, nondiscriminatory reasons for discipline and
8 termination. Therefore, the burden shifts back to Plaintiff to show pretext.

9 Plaintiff asserts she was performing her job satisfactorily in other areas, she
10 provided "affirmative defenses regarding the use of the computer" ("why would he
11 just watch someone use him computer without permission ... Affirmative defense
12 was the development of the bar code system and inquiring about jobs available
13 within [sic] the company."), the garbage cans were being cleaned because "public
14 policy demands cleanliness" and "it was the responsibility of the person to finish
15 the process", and the "unwanted advances" allegation has since been recanted.
16 ECF Nos. 69 at 7, 70 at 7, ¶¶ 24, 26, 98-1. Additionally, while Plaintiff does not
17 dispute she was late at times, she asserts Mr. Sawyer did not discipline other
18 employees who were late, she was there but would not clock in, and she would be
19 doing housekeeping matters not within the scope of her job. ECF Nos. 69 at 3, ¶
20 15, 70 at 7, ¶ 28. Plaintiff produced a declaration of another former employee who

1 stated she was late almost every day but rather than disciplining her, Mr. Sawyer
2 changed her hours. ECF No. 98-1. Plaintiff provided evidence to create a genuine
3 issue of material fact as to whether Defendants' reasons for Plaintiff's discharge
4 was pretext for age discrimination. Therefore, summary judgment on this claim is
5 not appropriate.

6 2. *Title VII*

7 Defendants move for summary judgment on Plaintiff's Title VII claims for
8 gender and religious discrimination. ECF No. 58 at 11-15.

9 Title VII prohibits unlawful employment practices for an employer to
10 "discriminate against any individual with respect to his compensation, terms,
11 conditions, or privileges of employment, because of such individual's race, color,
12 religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). The plaintiff must
13 show (1) the employer engaged in discriminatory conduct, (2) the conduct was
14 severe and pervasive as to affect the terms, conditions, or privileges of
15 employment, and (3) the conduct was because of the employee's protected status.
16 *Fuller v. Idaho Dep't of Corr.*, 865 F.3d 1154, 1174 (9th Cir. 2017). In evaluating
17 whether conduct is severe or pervasive, courts look at "all the circumstances,
18 including the frequency of the discriminatory conduct; its severity; whether it is
19 physically threatening or humiliating, or a mere offensive utterance; and whether it
20 unreasonably interferes with an employee's work performance." *Clark Cty. Sch.*

1 *Dist. v. Breeden*, 532 U.S. 268, 270-71 (2001) (internal quotation marks and
2 citation omitted).

3 a. Gender Discrimination

4 Plaintiff alleges Mr. Sawyer called Plaintiff “Ol Girl” on at least one
5 occasion such that coworkers knew Mr. Sawyer was referring to Plaintiff and that
6 coworker stated he had a problem with Plaintiff being female power washing the
7 sidewalk and asked Plaintiff “Where should we put your body?” ECF No. 58 at
8 12. While offensive, these occasional statements do not rise to the level of severity
9 to rise a genuine issue of material fact as to a Title VII violation that interferes
10 unreasonably with Plaintiff’s employment. *See Kortan v. California Youth Auth.*,
11 217 F.3d 1104, 1110 (9th Cir. 2000) (finding offensive statements such as
12 “castrating bitch”, “madonna”, or “regina” made on several occasions not severe or
13 pervasive enough to unreasonably interfere with the plaintiff’s employment).
14 Therefore, summary judgment on this claim is appropriate.

15 b. Religious Discrimination

16 Plaintiff alleges Mr. Sawyer used the phrase “God damn”, “I hate God”, and
17 responded to Plaintiff’s questioning about God. ECF No. 58 at 14. Plaintiff also
18 alleges the owners of Westmont Hospitality are Muslims who do not prefer
19 Christian employees and instructed employees to remove Bibles from the hotel
20 rooms. ECF Nos. 58, 69. Like the statements concerning gender discrimination,

1 Mr. Sawyer's one-off statements does not rise to the level of severe or pervasive.
2 *See Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1163, 1167
3 (D. Nev. 2009) (finding non-threatening statements regarding religion did not
4 amount to severe and pervasive harassment). There are no genuine issues of
5 material fact as to whether Mr. Sawyer's conduct or the Westmont Hospitality
6 owners' religion in any way interfered with Plaintiff's work performance.
7 Therefore, summary judgment is appropriate.

8 3. *FLSA*

9 Defendants move for summary judgment on Plaintiff's FLSA overtime and
10 minimum wage claims. ECF No. 58 at 16.

11 a. Overtime

12 The FLSA requires employers to pay overtime pay where an employee
13 works over 40 hours in a given workweek. 29 U.S.C. § 207. "[A]t a minimum, a
14 plaintiff asserting a violation of the FLSA overtime provisions must allege that she
15 worked more than forty hours in a given workweek without being compensated for
16 the hours worked in excess of forty during that week." *Landers v. Quality*
17 *Commc'ns, Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), *as amended* (Jan. 26, 2015).

18 As to the overtime allegations, Defendants assert Plaintiff was paid for all
19 overtime hours and submitted Plaintiff's timesheets. ECF No. 58 at 16. While
20 Defendants assert "[a]ll of Plaintiff's paystubs demonstrate that she was paid

overtime when overtime was worked”, ECF No. 58 at 16, Plaintiff’s timesheets show two-week pay periods with hours worked in excess of 80 hours that were compensated with 0 overtime hours. *See, e.g.*, ECF No. 58 at 6 (“For the pay period of October 16, 2019, to October 31, 2019, Plaintiff was paid no overtime, but 102.50 regular hours. Plaintiff’s timesheet shows she worked 102.50 hours total.”). These timesheets raise a genuine issue of material fact as to whether Plaintiff is entitled to overtime compensation. Therefore, summary judgment on Plaintiff’s FLSA overtime claim is not appropriate.

b. Minimum Wage

The FLSA sets the minimum wage to not less than \$7.25 per hour. 29 U.S.C. § 206(a). To claim improper compensation under the FLSA, the Plaintiff must allege that the wages fell below the statutory minimum in a given workweek. *Id.*; 29 C.F.R. § 776.4; *Douglas v. Xerox Business Services, LLC*, 875 F.3d 884, 890 (9th Cir. 2017).

As to the Sunday hours, Defendants asserts Plaintiff was not scheduled to work on Sundays, did not clock in, and did not tell anyone she was working. ECF No. 58 at 16. Plaintiff does not offer any facts or argument in opposition to this claim. There is no evidence that the alleged unpaid hours, when averaged with the paid hours in a given workweek, resulted in payment less than the federal minimum wage. 29 U.S.C. § 206(a); *Adair v. City of Kirkland*, 185 F.3d 1055,

1 1062 n.6 (9th Cir. 1999) (“[E]ven though it is uncompensated, the employees are
2 still being paid a minimum wage when their salaries are averaged across their
3 actual time worked.”). Therefore, summary judgment on Plaintiff’s FLSA
4 minimum wage violation is appropriate.

5 4. *Federal and State EPA*

6 The EPA is an amendment to the FLSA that was created to ensure that
7 “equal work will be rewarded by equal wages.” *Rizo v. Yovino*, 950 F.3d 1217,
8 1222 (9th Cir.), *cert. denied*, 141 S. Ct. 189 (2020) (internal quotation and citation
9 omitted). The EPA, by way of the FLSA, prohibits discrimination. *See* 29 U.S.C.
10 § 215(a)(2)-(3). Regarding sex discrimination, the EPA provides:

11 No employer having employees subject to any provisions of this
12 section shall discriminate, within any establishment in which such
13 employees are employed, between employees on the basis of sex by
14 paying wages to employees in such establishment at a rate less than
15 the rate at which he pays wages to employees of the opposite sex in
such establishment for equal work on jobs the performance of which
requires equal skill, effort, and responsibility, and which are
performed under similar working conditions. . . .

16 29 U.S.C. § 206(d)(1).

17 The plaintiff bears the burden of establishing a *prima facie* case of
18 discrimination that employees of different sex were paid different wages for equal
19 work. *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1073-74 (9th Cir. 1999). The
20 plaintiff must demonstrate that the compared jobs – not the individuals – are

1 “substantially equal.” *Stanley*, 178 F.3d at 1074. Under the “substantially equal”
2 analysis, the court looks to: (1) whether the jobs share a common core of tasks; and
3 (2) whether the additional tasks make the jobs substantially different. *Id.*

4 If the plaintiff can establish a *prima facie* case, the defendant can show
5 “such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a
6 system which measures earnings by quantity or quality of production; or (iv) a
7 differential based on any other factor other than sex” to operate as an affirmative
8 defense. 29 U.S.C. § 206(d)(1); *Rizo v. Yovino*, 950 F.3d at 1222. The inquiry
9 ends there: Plaintiff is not required to show pretext because EPA cases do not
10 follow the burden-shifting framework set out in *McDonnell Douglas*. *Rizo*, 950
11 F.3d at 1223.

12 Washington’s EPA parallels its federal counterpart. *Adams v. Univ. of*
13 *Washington*, 106 Wash. 2d 312, 317 (1986). As a result, decisions interpreting the
14 federal act may be helpful. *Hudon v. W. Valley Sch. Dist. No. 208*, 123 Wash.
15 App. 116, 124 (2004). Washington’s EPA assures that people receive equal pay
16 for equal work. *Id.* Employees are equally employed if “the individuals work for
17 the same employer, the performance of the job requires similar skill, effort, and
18 responsibility, and the jobs are performed under similar working conditions.”
19 RCW 49.58.020(2).

1 Plaintiff asserts male employees were paid more for the same job
2 immediately prior to and after Plaintiff's employment. *See* ECF No. 70 at 8, ¶ 39.
3 Plaintiff originally contended that employee Thomas McCaslin replaced her, but
4 Defendants assert that he was hired as a housekeeper and porter. Plaintiff disputes
5 this to the extent that Mr. McCaslin "eventually was making \$20 an hour for the
6 maintenance position." ECF No. 70 at 9, ¶ 48. Viewing the facts in light most
7 favorable to Plaintiff, the Court finds that Mr. McCaslin was not in a substantially
8 equal position as Plaintiff as he performed both housekeeper and porter roles
9 compared to Plaintiff's maintenance role.

10 Plaintiff also asserts that another employee, Tristan Blakely, was her
11 maintenance replacement who was male, 20 years younger, and hired at a higher
12 wage than Plaintiff. ECF No. 69 at 4, ¶ 19. Defendants oppose the Mr. Blakely's
13 records as wrongfully obtained outside of the discovery process. ECF No. 84.
14 Defendants also assert Mr. Blakely had more qualifications than Plaintiff as a
15 certified electrician and experience with HVACs and DC/ACs, and was hired on at
16 \$15 per hour as compared to Plaintiff's \$14.95 per hour. ECF No. 84 at 9. Even
17 where Plaintiff establishes a prima facie case with Mr. Blakely performing a
18 substantially similar role, Defendants provided an affirmative defense that the five
19 cent differential was based on a factor other than sex, i.e., based on Mr. Blakely's
20 experience and credentials. 29 U.S.C. § 206(d)(1). Viewing the facts in light most

1 favorable to Plaintiff, no rational jury could find other than Defendants' proffered
2 reasons explains the wage disparity. Therefore, summary judgment on Plaintiff's
3 federal and state EPA claims is appropriate.

4 *5. False Claims Act*

5 Defendants move for summary judgment on Plaintiff's False Claims Act
6 claim. ECF No. 58 at 17.

7 The False Claims Act ("FCA") prohibits anyone from knowingly submitting
8 false claims to the federal government or knowingly causing another to submit
9 such false claims. 31 U.S.C. § 3729(a)(1)(A). A plaintiff must demonstrate (1) a
10 false statement or fraudulent course of conduct, (2) made with scienter, (3) that
11 was material, causing (4) the government to pay out money or forfeit moneys due."
12 *U.S. ex rel. Campie v. Gilead Scis., Inc.*, 862 F.3d 890, 902 (9th Cir 2017).

13 Defendants assert they have not provided the federal government any
14 information regarding Plaintiff, other than tax information. ECF No. 58 at 17. In
15 response, Plaintiff asserts "Sawyer purposely gave false information to a [state]
16 government agency that had detrimental effects on Plaintiff's ability to get
17 unemployment." ECF No. 69 at 17. Viewing the facts in light most favorable to
18 Plaintiff, there are no facts in the record that show a statement was made to the
19 United States nor that the United States paid out money due in reliance on any
20 statement. Therefore, summary judgment on this claim is appropriate.

1 6. *Title VIII*

2 Defendants move for summary judgment on Plaintiff's Title VIII Fair
3 Housing Act claim. ECF No. 58 at 17-18.

4 The Fair Housing Act ("FHA") protects individuals from discrimination
5 based on race, color, national origin, religion, sex, sexual orientation, familial
6 status, and disability when seeking housing. 42 U.S.C. §3604. Courts apply Title
7 VII's analysis to FHA claims. *Budnick v. Town of Carefree*, 518 F.3d 1109, 1113-
8 14 (9th Cir. 2008). The plaintiff must show (1) her rights are protected under the
9 FHA and (2) she suffered a distinct and palpable injury as a result of the
10 defendant's discriminatory conduct. *Harris*, 183 F.3d at 1051. Discriminatory
11 intent or motive is a necessary element of an FHA disparate treatment claim.
12 *Wood v. City of San Diego*, 678 F.3d 1075, 1081 (9th Cir. 2012).

13 Here, there are no material facts in dispute as to whether Plaintiff was
14 evicted from the General Manager's suite based on a protected characteristic or
15 that Plaintiff was entitled to stay in the General Manager suite. Defendants assert
16 an employee from Hometowne Studios' corporate headquarters told Plaintiff, who
17 was not the General Manager, she was not allowed to stay for free in the General
18 Manager's suite while Mr. Sawyer was at training. ECF No. 58 at 18. Plaintiff
19 does not substantively challenge or otherwise offer any facts to dispute this. ECF
20 No. 69 at 17-18. Here, there is no issue of material fact as to whether the eviction

1 was taken based on a protected characteristic such as sex or religion. Therefore,
2 summary judgment on this claim is appropriate.

3 7. *WLAD*

4 Plaintiff asserts a Washington Law Against Discrimination claim in her
5 Third Amended Complaint. ECF No. 41. Because Defendants do not move for
6 summary judgment on this claim, the Court does not address it.

7 **III. Motion for Sanctions**

8 Defendants filed a motion for sanctions or for second order to compel. ECF
9 No. 75. Plaintiff filed an untimely response. ECF No. 90. Defendants move to
10 strike the untimely response. ECF No. 94.

11 As an initial matter, the Court overrules Defendants' objection under Rule
12 408 as Plaintiff does not seek to admit evidence of settlement negotiations to prove
13 or disprove the validity or amount of a disputed claim or to impeach by a prior
14 inconsistent statement or contradiction. Fed. R. Evid. 408. In any event, it is not
15 clear why Plaintiff included this information in her response to a motion for
16 sanctions and the Court disregards it as irrelevant.

17 The Court may sanction a party's failure to obey a discovery order with any
18 just order, including prohibiting the disobedient party from supporting or opposing
19 designated claims or defenses, or for introducing designated matters in evidence.
20 Fed. R. Civ. P. 37(b)(2). In assessing sanctions, courts look to (1) the public's

1 interest in expeditious resolution of litigation, (2) the Court's need to manage its
2 docket, (3) the risk of prejudice to Defendants, (4) the public policy favoring
3 disposition of cases on the merits, and (5) the availability of less drastic sanctions.
4 *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990).

5 On August 9, 2022, the Court granted in part Defendants' motion to compel
6 and ordered Plaintiff to respond to outstanding interrogatories and requests for
7 production to the best of her ability no later than August 31, 2022. ECF No. 68 at
8 3. On September 1, 2022, Defendants filed the motion for sanction for Plaintiff's
9 violation of the court's order or for second order to compel Plaintiff's compliance
10 with discovery. ECF No. 75. Specifically, Defendants seek dismissal for
11 Plaintiff's cherry-picking what discovery she produces and failure to fully respond
12 to the second set of discovery. *Id.*

13 Here, it is clear there is outstanding discovery and that Plaintiff has been
14 selective in what discovery she produces. While there is a risk of prejudice to
15 Defendants, the Court notes the public policy in favor of deciding the case on the
16 merits especially where there is the availability of less drastic sanctions compared
17 to Defendants' requested dismissal. Because discovery has closed, the Court
18 prohibits Plaintiff from introducing matters into evidence for which she did not
19 produce in discovery. Moreover, the Court orders the parties bear their own costs
20 and fees where Plaintiff is proceeding *pro se* and *in forma pauperis*, participating

1 in litigation, and communicating with Defendants to make an award of expenses
2 unjust. Fed. R. Civ. P. 37(b)(2)(C).

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 4 1. Defendants' Motion for Summary Judgment (ECF No. 58) is **GRANTED in**
5 **part** and **DENIED in part**.
- 6 2. Defendants' Motion for Sanctions or for Second Order to Compel (ECF No.
7 75) is **GRANTED in part** and **DENIED in part**.
- 8 3. Defendants' Motion to Expedite Motion to Strike Untimely Response (ECF
9 No. 92) is **DENIED as moot**.
- 10 4. Defendants' Motion to Strike Response to Motion (ECF No. 94) is
11 **DENIED**.
- 12 5. Each party to bear their own costs and fees.

13 The District Court Executive is directed to enter this Order and forward
14 copies to the parties.

15 DATED October 18, 2022.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

20
THOMAS O. RICE
United States District Judge